No. 90-155

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1989

In re RICHARD MILLAN, Petitioner

PETITION FOR A WRIT OF MANDAMUS/ PROHIBITION TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, AND THE HONORABLE EDWARD RAFEEDIE, AND THE HONORABLE WILLIAM J. REA, JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

PETITIONER'S REPLY BRIEF

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PETITIONER'S RESPONSE TO RESPONDENTS' JURISDICTIONAL ARGUMENT

This extraordinary case, which has no parallel in American jurisprudence, contains such massive extraordinary misconduct that this petitioner ("Millan") can find no precedent even coming close in any recorded federal case.

This is a case that is a massive wrong not only against this single litigant, but a massive wrong against the American people, its laws and the institutions of justice that were set in place by the founding fathers to protect each and every citizen.

Swift action on this case by the United States Supreme Court will send a loud and clear message to the Bench and Bar, that the wrongs brought to the attention of this Court by Millan will not be tolerated and that any person

proceeding Pro Se within the Federal Courts will be protected by law.

The actions of Respondent Marsha Bennett ("Bennett") and her attorney Stephen Lubell ("Lubell") and their massive misconduct (Petitioner's Brief for Writ of Mandamus ("Pet. Brief") at pages 13-20) are exactly the type of case that begs for Supreme Court intercession under the "Supervisory" role of this Court.

The jurisdiction of the United States Supreme Court in this type of case is well-settled law. There is no other means than by the Writ of Mandamus to force the trial judge to do his duty. In this instant action Millan filed a motion to disqualify counsel in June 13, 1988 and as of this date of September 1, 1990, the District Court has refused to rule on that duly filed motion and has in fact kept Millan from

perfecting his appeal to the Ninth Circuit Court of Appeals by employing the means and methods described by Millan in his Appendix to Writ of Mandamus (Appendix FF, pages A-235 through A-242) filed with this Court.

Millan, in his Petition for a Writ of Mandamus, has also brought the attention of this Court to the actions of the District Court, its clerks and its decisions that also all beg for Supreme Court intercession under the supervisory role of this Court.

RESPONDENTS' OPPOSITION BRIEF ATTACKS THE JURISDICTION OF THE SUPREME COURT

1. **"Real Parties in Interest submit that the Petitioner has failed to indicate how the issuance of a writ of mandamus/prohibition as requested by Petitioner will aid in this Court's appellate jurisdiction. There must be an indication to this Court of how the issuance of the extraordinary writ will aid in this Court's appellate jurisdiction before the Court can determine if**

an extraordinary writ may issue." (Respondents' Brief at pages 7-8).

Millan contends to this Court that the actions of the District Court in using events that did not happen within this case as a partial basis for its decision to give respondents in this case a partial summary judgement (Pet. Brief at pages 44-47) place a cloud over the motives of the District Court in this case. If in fact respondents were entitled to a partial summary judgement, why was it necessary for the District Court to include in its opinion reliance upon events that did not happen.

Mr. Lubell in his Reply Brief does not deny the above allegations nor does he offer any facts or proof that the District Court's order is correct. Mr. Lubell has a complete intimate knowledge of this case and yet he was content to accept a District Court

decision that quoted incorrect facts and events that he knew to be incorrect.

Millan does not know who in the Court's Chambers wrote that opinion; however, Millan believes that the law clerk "Harry" was instrumental in that decision as he was in the District Court's Order to deny Millan leave to file his first amended complaint. The law clerk "Harry was also a participant with Lubell in the ex parte conversation (Pet. App. to Writ at pages A-85-A-100) during the period of time that the Court, Harry, Lubell and other defense counsel knew Millan would be out of the country (Pet. App. to Writ at pages A-229-A-231) and concealed the ex parte conversation from Millan. Millan further believes that Harry and Lubell were also instrumental in placing the security guards around Millan during the

hearings cited in his brief (Pet. Brief at pages 43-44).

It is clear, by using events that did not happen in its decisions, the District Court precludes the Supreme Court from it appellate role because in order to disprove this allegation on appeal, it would be necessary for the Supreme Court to go over every document, hearing and motion in this case to prove or disprove Millan's most serious allegations (Pet. Brief pps 44-47).

Mr. Lubell has not argued against these allegations. It would stand to reason that if Millan was not correct in his allegations of this extraordinary conduct by the District Court, Lubell would have done all in his power to bring the evidence, documents or transcripts to this Court's attention.

Millan submits to this Court that the respondents' actions (Pet. Brief

pages 13 through 19), if sustained, will preclude the Supreme Court from its appellate jurisdiction because there will be no case to appeal. Such is the massive nature of their misconduct.

Millan further submits that the Writ of Mandamus is well within the Supreme Court's supervisory powers over the District Courts and the Bar practicing before the Federal Court Bench. The Supreme Court spoke of this in Firestone Tire & Rubber Co. V. Risjord 1981, 101 S.Ct. 669, 676 n. 13, 449 U.S. 368, 66 L.Ed.2d 571, when it ruled that a collateral order appeal cannot be taken from a decision refusing to disqualify counsel. The Supreme Court suggested "in the exceptional circumstances for which it was designed, a writ of mandamus *** might be available."

The Ninth Circuit Court of Appeals ruled that mandamus procedure was held

appropriate to review denial of a motion to disqualify opposing counsel in Sewerage Agency v. Jelco Inc., C.A. 9th, 1981, 646 F.2d 1339, 1343-1344.

> "The court found there was no adequate alternative means of relief, that irremediable damage might result, that there was a risk of injury to the public perception of the legal profession, and that the proceeding presented a question of law that had not been addressed by the circuit court of appeals. (after undertaking review, the 9th C.A. also reviewed the question whether there was an abuse of discretion; in the end, mandamus was denied.)"

Millan further submits to this Court that the actions of the District Court did, in fact, usurp the powers and authority granted to the Congress to make the laws of this nation under the Constitution. The District Court did this by creating its own laws when it ordered Millan to take his complaints of attorney misconduct to the "State Bar", on May 9, 1988 in the following manner:

> Mr. Millan: "I have in many, many motions in front of this court asked this court to investigate the misconduct of Mr. Steven Lubell. Not only in---"
>
> The Court: "You are going to have to take that to the State Bar. This court is not here to investigate attorneys in the way they practice law." (App. R pg. A-107 Pet. for Writ of Mandamus).

This usurpation of power by the District Court was with a total lack of legal foundation or authority and Millan can find no case where a District Court was ever granted the authority to give jurisdiction of any portion of a federal case before that court to a nonjudicial body or entity. By its action, the District Court completely nullified F.R.C.P. Rule 11 for Millan and allowed attorney Stephen Lubell to proceed with his massive misconduct in this case.

The District Court has a total and complete knowledge of the inherent powers of the court and a highly

technical knowledge of F.R.C.P. Rule 11. In August of 1987, in an eloquent written opinion in Mercury Service, Inc. v. Allied Bank of Texas, 117 F.R.D. 147, 156 (1987) (Pet. "App J" at pages A-62-A-82), the District Court discussed, among other things, the "mandatory" nature of Rule 11 (Id. at A-16 [10]), the "punitive" nature of Rule 11 (Id. at pages A-20 though A-74), and the use of Rule 11 to punish attorney misconduct,

> "Use of Rule 11 against "the unscrupulous lawyer knowingly deceiving the court are appropriate." (Id. at A-74.)

The District Court further discussed inherent powers in the following manner:

> "In addition to their authority under Rule 11, the Federal Courts have authority to impose sanctions under their "inherent powers" which are necessary to exercise all the others." (Id. at A-74.)

There can be no clearer double standard of justice than a district court that denies a party in Pro Se the full and complete protection of the law as it is written on the one hand and on the other writes an eloquent opinion that expressly states all of his mandatory obligations under the law and his duty to use that law to its full extent and meaning in a similar situation.

In the examination of the District Court's order for Millan to take his complaints to the "State Bar", it would only be fair for this Court to examine the nature of the quagmire into which the District Court ordered Millan.

During the period of on or about 1985-1986 the California Legislature rewrote the "Bar" disciplinary system to take care of an estimated 20,000 complaints per year against members of the State Bar of California. The law

included the imposition of a State Bar Discipline Monitor to oversee the changes in the law that the California Legislature felt were needed to protect the citizens of the State of California. (App.HH Pet. Reply Brief at page A-5.)

The district court ordered Millan to take his complaints to the State Bar on May 9, 1988.

On June 22, 1988 as reported by the State Bar Monitor there were 7,774 open inquiry cases pending against California State Bar Members (See App.II to Pet. Reply Brief at page A-6).

Had Millan taken his complaints to the State Bar of California in May of 1988 as ordered by the District Court, Millan would have been faced with a backlog of cases that would have extended any hearing afforded Millan beyond the year 1995. (App.JJ to Pet. Reply

Brief at page A-7). The trial date was set for October 1988.

The District Court's extraordinary order would have forced Millan into trying a case in district court in the face of massive misconduct by defendants in this case.

The District Court further usurped the power of the court rules when it repeatedly ignored Millan's request for the District Court to invoke Local Rule 2.6.4 (Pet. App. "S" to Brief for Writ of Mandamus, pages A-109-A-110).

2. **"The Circumstances alleged by petitioner are not extraordinary circumstances warranting the exercise of this Court's discretionary powers. Rather the circumstances alleged are part of a tactic by Petitioner to harass and circumvent the orderly administration of justice."** (Resp. Brief at page 8.)

Millan cannot disagree more with Lubell's statement above. Millan does

not believe that the circumstances in this case are the norm. If this Court reads the above as Millan has read it, it would assume that normal procedure for the bench and bar to follow would be that the misconduct related in this case is all part of doing business and that the rules of court are only there to be circumvented. Mr. Lubell, by the above statement and his complete lack of defense to the allegations in this Writ of Mandamus, does a great injustice to the bench and bar of this nation.

3. **"Prior to filing the instant petition for an extraordinary writ the Petitioner has not sought a similar remedy in the U.S. Court of Appeals. Adequate relief should properly first be attempted to a lower court in which there is a similar remedy before requesting an extraordinary writ from the Supreme Court."** (Resp. Brief at page 8.)

Millan has attempted two appeals to the Ninth Circuit Court of Appeals, the first one ended with the Court stating

that no final judgment had been rendered in the case. The second ended when Millan could not perfect his appeal because of the actions of the District Court as Millan has related herein.

The Ninth Circuit could have converted those appeals into a Writ of Mandamus yet chose not to do so. (App. to Reply Brief "GG" at page A-1-A-4.)

CLAIMS OF HARASSMENT

> **"The Petitioner was the husband of the Real party in Interest, Marsha Bennett and the son in law of the Real Party in Interest, Colleen Steinbaugh. The marriage, which resulted after a brief two (2) month courtship, ended after seven (7) months. Since the demise of the marriage, Petitioner, has used certain legal knowledge pro se to harass, humiliate, and annoy Real Parties in interest." (Brief of RPI at pages 2-3.)**

There is nothing more in Respondents' Brief. There is no example of facts provided of how Millan has harassed these respondents. There are no

examples or facts provided of how Millan has humiliated these respondents. There are no examples or facts provided as to how Millan has annoyed these respondents. Finally, there are no examples or facts provided as to how Millan has used "certain legal knowledge pro se," in some illegal fashion.

Respondents offer a novel defense to Millan's allegations of misconduct in that somehow Millan's marriage at one point to one of the respondents for some six months constitutes harassment and authority for Lubell and Bennett to circumvent the Federal Rules of Civil Procedure, the Rules of Court, the Rules of Professional Conduct, the ABA Model Rules, the State of California Penal Code § 653F(a), and the California Business and Professions Code § 6068(d). Further, somehow the fact of the six-month marriage allows respondents to

suppress evidence, commit perjury, suborn perjury, conceal documents, witnesses, and material facts, misrepresent prior court proceedings, misrepresent cited authority, harass the opposing party and have ex parte contact with the Court without revealing that contact to the opposing party.

However, Mr. Lubell has neglected to inform the Supreme Court that Marsha Bennett had instituted a law suit against Millan in Superior Court for the State of California. That suit alleged breach of contract and fraud and was served on Millan at the United States Courthouse in Los Angeles on or about December 4, 1984 in an effort to prevent Millan from notifying the Bankruptcy Court that Respondent Colleen Steinbaugh was committing a fraud on that court.

Mr. Lubell has also neglected to inform the Supreme Court that Bennett in

the Divorce settlement of Millan v. Millan specifically had a clause inserted into the final judgement order that she intended to pursue the State Court litigation (CR: 62, p. 38 "L") and thus continue the litigation between the parties.

Mr. Lubell also neglected to inform the Supreme Court that Marsha Bennett and Colleen Steinbaugh failed to appear for depositions and to produce subpoenaed documents in that case on July 23, 1987 and on January 31, 1990. The Superior Court, on a motion from Millan, dismissed Bennett's suit against Millan with prejudice.

Mr. Lubell further did not inform the Court that he was the attorney for Bennett in the state case. (CR: ___, Plaintiff's Response to Order to Show Cause, May 22, 1990, pp. 24-29.)

Conclusion

Millan has provided the Supreme Court with the facts, documents and evidence in this case. There has been no rebuttal, evidence, documents or legal argument provided by respondents to this Court that would disprove any allegation or contention made by Millan against these respondents.

Respondents have provided the Court with a very clear example of how even at this late date, they have attempted to mislead and misrepresent proceedings to the courts involved in this case.

> **"Upon learning that real party in interest, Marsha Bennett remarried, petitioner, moved to amend his RICO complaint to include as an additional party Uday Sawhney, the new husband of Real Party in Interest, Marsha Bennett...."**
> (Opposition Brief at pg. 3)

Millan filed his motion for leave to amend his complaint on March 13,

1988. The court record will show that on July 24, 1987 Millan first learned of the remarriage of Bennett. For seven full months thereafter Lubell and Bennett concealed the identity of Uday Raj Sawhney from Millan. (App.KK to Pet. Reply Brief at page A-8.)

Millan contends that this Court has the complete jurisdiction and responsibility for awarding Millan each and every Order that Millan has prayed for in his Petition for a Writ Mandamus filed with this Honorable Court.

Respectfully submitted,

This date of September 2, 1990.

RICHARD MILLAN
COUNSEL OF RECORD
In Propria Persona

No. 90-155

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OF THE
United States

OCTOBER TERM, 1989

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APPENDIX TO PETITIONER'S REPLY BRIEF

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APPENDIX TO PETITIONER'S REPLY BRIEF

RICHARD MILLAN
3941 SOUTH BRISTOL ST.
Suite B-338
SANTA ANA, CA 92704-7429
(714) 641-4831

In propria Persona

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

RICHARD MILLAN Plaintiff v MARSHA BENNETT, Et al, Defendants	) Civil Action No.) 87-2283 WJR)) NOTICE OF APPEAL)TO THE NINTH CIRCUIT) COURT OF APPEALS

NOTICE OF APPEAL

TO THE HON. WILLIAM J. REA, JUDGE, UNITED STATES DISTRICT COURT.
TO THE HON. EDWARD RAFEEDIE, JUDGE, UNITED STATES DISTRICT COURT.
TO DEFENDANTS MARSHA BENNETT, COLLEEN STEINBAUGH AND THEIR ATTORNEY OF RECORD STEVEN LUBELL.

NOTICE is hereby given that Plaintiff RICHARD MILLAN hereby appeals to the United States Court of Appeals for the Ninth Circuit from the following District Court Orders.

1. Plaintiff applies for a Writ of Mandamus/Prohibition Re: Order denying leave to file amended complaint entered in this action on April 21, 1988.

2. Plaintiff applies for a Writ of Mandamus/Prohibition Re: Order denying recusal of the Hon. William J. Rea entered in this action on August 26, 1988.

3. Plaintiff applies for a Writ of Mandamus/Prohibition Re: Order denying disqualification of Attorney Steven Lubell entered in this action.

4. Plaintiff appeals from an order granting summary judgement to defendants Marsha Bennett and Colleen Steinbaugh on counts 5, 6 and 7 of the complaint pursuant to Minute Order entered in this action on October 17, 1988.

Pursuant to United States District Court for the Central District of California Local Rule 17.1(a) Plaintiff files the following names of all parties to the judgement or order; and (b) the names and addresses of the attorneys for each party and furnishes the clerk of the District Court sufficient copies of this notice of appeal to permit prompt compliance with the service requirements of F.P. App. P. 3(d).

PLAINTIFF: RICHARD MILLAN
3941 SO. BRISTOL STREET
SUITE B-338
SANTA ANA, CALIFORNIA 92704-7429

V.

THE HON. WILLIAM J. REA, JUDGE
UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
OFFICE OF THE CLERK
UNITED STATES COURTHOUSE
312 NORTH SPRING STREET
LOS ANGELES, CALIFORNIA 90012

THE HON. EDWARD RAFEEDIE, JUDGE
UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
OFFICE OF THE CLERK
UNITED STATES COURTHOUSE
312 NORTH SPRING STREET
LOS ANGELES, CALIFORNIA 90012

DEFENDANTS: MARSHA BENNETT AND COLLEEN STEINBAUGH AND THEIR COUNSEL OF RECORD:
STEVEN K. LUBELL
1234 SIXTH STREET, SUITE 203
SANTA MONICA, CALIFORNIA 90401
(213) 451-9904

DATED NOVEMBER 8, 1988

RICHARD MILLAN

_____

IN PROPRIA PERSONA

Excerpts from the Third Progress Report of the State Bar Discipline Monitor by Robert C. Fellmuth, State Bar Discipline Monitor, Sept. 1, 1988, at page 8:

"CB 1543 (Presley) requires the State Bar Discipline Monitor to make an Initial Report on June 1, 1987, and subsequent written and oral reports to the Senate and Assembly Judiciary Committees every five months thereafter (Business and Professions Code Section 6086.9). A First Progress Report was issued in November 1987; and a Second Progress Report was released in April 1988. These reports were presented to the Supreme Court, the Legislature, and the public as required by law".

Excerpts from the Third Progress Report of the State Bar Discipline Monitor by Robert C. Fellmuth, State Bar Discipline Monitor, Sept. 1, 1988, at page 16:

"What should cause more than a little concern for all of us working with the discipline system is the number of cases in this somewhat amorphous category--all of them hidden from current backlog status by their pre-complaint designation. As of June 22, 1988, 7,774 open inquiry cases were pending in the Intake unit...."

Third Progress Report of the State Bar Discipline Monitor by Robert C. Fellmuth State Bar Discipline Monitor Sept. 1,1988, at page 16.

Excerpts from the Third Progress Report of the State Bar Discipline Monitor by Robert C. Fellmuth, State Bar Discipline Monitor, Sept. 1, 1988, Exhibit A-6 and Exhibit A-8:

June 1988 Complaint Disposition Summary.

"CLOSED	285
TERMINATED	78
ADMONITION	6
NOTICE	29
TOTAL	398

AGE OF COMPLAINTS PENDING AND COMPARISON.

" JUNE 1987		JUNE 1988	
0-6 MONTHS	2560	0-6 MONTHS	1762
7-9 MONTHS	838	7-9 MONTHS	1043
10-12 MONTHS	497	10-12 MONTHS	452
13-21 MONTHS	776	13-21 MONTHS	663
21+ MONTHS	413	21+ MONTHS	538"

Third Progress Report of the State Bar Discipline Monitor by Robert C. Fellmuth State Bar Discipline Monitor Sept. 1,1988, Exhibit A-6. and Exhibit A-8

EXCERPTS OF COURT RECORD 33, AT PAGE 6, PARAGRAPH 15, FILED WITH THE DISTRICT COURT ON MARCH 14, 1988:

"15. On July 24, 1987, at 3:45 P.M. Plaintiff telephoned Mr. Scott Gilmore, the attorney for R. STEINBAUGH, M. GARDNER, B. GARDNER, AND FASHION EMBROIDERY INC. During the conversation Mr. Scott Gilmore informed Plaintiff that Mr. Steven Lubell, the atty for COLLEEN STEINBAUGH, would be the attorney for MARSHA BENNETT when we served her. Mr. Gilmore related a conversation he had with a man who identified himself as the husband of MARSHA BENNETT. This husband of MARSHA BENNETT angrily instructed Mr. Gilmore not to speak to Plaintiff or communicate with Plaintiff in any way. Mr. Gilmore then told the "husband of MARSHA BENNETT not to tell him how to practice law."